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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,765	12/28/2000	Mitchell R. Swartz		8044
7590	03/12/2012	Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston, MA 02493	EXAMINER PALABRICA, RICARDO J	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 03/12/2012	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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MAR 12 2012

Mitchell R. Swartz ScD, MD, EE  
16 Pembroke Road  
Weston, MA 02493

In re: Mitchell R. Swartz : DECISION ON PETITION  
Serial No. 09/750,765 : UNDER 37 CFR 1.181  
Filed: December 26, 2000 :  
For: METHOD AND APPARATUS TO  
CONTROL ISOTOPIC FUEL  
LOADED WITHIN A MATERIAL

This is a decision on the petitions filed June 15, 2006, October 17, 2001 and October 21, 2011 under 37 CFR 1.181 requesting the withdrawal of the examiner's holding that the appeal brief is defective dated December 30, 2003 and March 31, 2004 and forward the appeal brief of January 7, 2004 to the Board of Patent and Interferences.

The petition is GRANTED to the extent indicated below.

From the filing of the first appeal brief on October 28, 2003, the examiner required strict compliance with the requirements of paragraphs (c) of 37 CFR 1.192. Rule 37 CFR 1.192, however, provided in July of 2003<sup>1</sup> that: "The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner." See 37 CFR 1.192(c) (emphasis added). The appeal brief in this application was filed by a pro se applicant, there is no requirement that the appeal brief of October 28, 2003 or the subsequent appeal brief of January 7, 2004 strictly comply with the requirements of 37 CFR 1.192(c). Accordingly, the notices holding the appeal brief filed September 23, 2003 non-compliant, and the decision to dismiss the appeal and hold the application abandoned for failure to timely file a compliant appeal brief are withdrawn. In addition, the abandonment is vacated.

This decision is based solely upon the provision in former 37 CFR 1.192(c) which excluded its application to an appeal brief filed by an appellant who is not represented by a registered practitioner. Nothing in this decision should be taken as an indication that the appeal briefs filed in this application comply with the requirements of 37 CFR 1.192(c) (or current 37 CFR 41.37(c)) or that there is any merit to the myriad of contentions presented in the petitions filed in this application. Petitioner is also advised that this decision does not preclude the Board of Patent Appeals and Interferences from treating the appeal briefs filed in this application in any manner it deems appropriate.

<sup>1</sup> The requirements for an appeal brief are currently set forth in 37 CFR 41.37.

Accordingly, the abandonment is vacated and the application is being forwarded to the examiner for consideration of the appeal brief filed January 7, 2004.

Any questions or comments with respect to this decision should be forwarded to Office of Petitions in writing. If applicant wishes to have this matter be decided at a higher authority, an explicit request that "A review of the Technology Center's decision be made by the Director of the USPTO" should be included with any future petition subsequent to a decision denying an earlier petition.

Any questions or comments with respect to this decision should be forwarded to SPE Jack W. Keith at (571) 272-6878.

Kathy Matecki

Kathy Matecki, Director  
Patent Technology Center 3600  
(571) 272-5250

jwk/lm: 3/6/12

LM